PENDAFTAR MUALAF NEGERI PERLIS & ORS v. LOH SIEW HONG & ANOTHER APPEAL

FEDERAL COURT, PUTRAJAYA
TENGKU MAIMUN TUAN MAT CJ
NALLINI PATHMANATHAN FCJ
ABU BAKAR JAIS FCJ
[CIVIL APPEAL NOS: 08(f)-35-02-2024(W) & 08(f)-47-02-2024(W)]
4 MARCH 2025

Abstract – *(i) Article 12(4) of the Federal Constitution requires the consent of both parents for the conversion of a minor to Islam. The word 'parent' in art. 12(4) must be interpreted as meaning both parents; (ii) The ruling of the Federal Court is binding throughout the nation; (iii) While Syariah Courts have full power to decide on matters within their jurisdiction, civil courts retain supervisory power to correct errors when Syariah Courts act outside their jurisdiction. A decision made by the Syariah Courts outside of their jurisdiction can be set aside by the civil courts.*

CONSTITUTIONAL LAW: *Federal Constitution – Article 160B – Authoritative text – Whether Bahasa Melayu or English version authoritative text of Federal Constitution – Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals*

CONSTITUTIONAL LAW: *Courts – Civil and Syariah courts – Jurisdiction and powers – Full power of Syariah Courts to decide matters within jurisdiction – Instances where Syariah Courts act outside of jurisdiction – Supervisory power of civil courts to correct jurisdictional error of Syariah Courts*

CIVIL PROCEDURE: *Courts – Federal Court – Decisions of Federal Court – Bindingness of Federal Court judgments throughout nation*

STATUTORY INTERPRETATION: *'parent' – Whether plural – Whether 'parent' in art. 12(4) of Federal Constitution should be read to mean both parents – Whether consent of both parents constitutionally required in order for certificates of conversion to have force of law – Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals*

The respondent was married to one Nagahswaran in 2008 and, at the time of their marriage, both parties professed the Hindu religion. The marriage was blessed with three children and the children too professed the Hindu religion. The respondent was forced to leave the matrimonial home due to the physical abuse by Nagahswaran and, consequently, she was separated from the children. The respondent filed for divorce at the High Court and later obtained an *ad interim* order for sole guardianship, care and control of

the children. Nagahswaran, however, refused to comply with the said order and did not return the children to the respondent. Nagahswaran, who had converted to Islam, had also converted the children to Islam. In the meantime, the divorce between the respondent and Nagahswaran was finalised. The respondent sought clarification from the Registrar of Mualafs, Perlis pertaining the status of the alleged conversion to Islam of the children as it was made without her consent as their lawful mother. Majlis Agama Islam dan Adat Istiadat Melayu Perlis stated that the conversion of the children had been made with the consent of Nagahswaran, their father. The respondent applied for a judicial review at the High Court but the application was dismissed. The High Court's decision was overturned by the Court of Appeal. Hence, the present application by the appellants for leave to appeal against the decision of the Court of Appeal. The issues that arose for adjudication were whether: (i) the Bahasa Melayu version of the Federal Constitution ('FC') was officially prescribed under art. 160(a) of the FC when the Yang di-Pertuan Agong ('YDPA') attended the launch of its translation; (ii) the term 'parent' and 'parents' were used to connote specific meaning in the FC, a point which was not addressed in the Federal Court decision in *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* ('*Indira Gandhi*'); (iii) the decision in *Indira Gandhi* was limited to Wilayah Persekutuan Putrajaya, Kuala Lumpur and Labuan and did not apply to Perlis; and (iv) the present case was akin, in fact and in principle, to the case of *Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor And Another Appeal* ('*Dahlia Dhaima*') and should apply such that the minors in question had been validly converted.

Held (dismissing application)
Per Nallini Pathmanathan FCJ delivering the judgment of the court:

(1) The authoritative text of the FC was the English version. As explained in *Indira Gandhi*, the YDPA had not prescribed the Bahasa Melayu translation as authoritative, as required by art. 160B of the FC. (paras 12 & 13)

(2) *Indira Gandhi* ruled that the consent of both parents was constitutionally required in order for certificates of conversion to have the force of law. In other words, the word 'parent', in art. 12(4) of the FC, should be read as meaning both parents. This was a conclusion arrived at after a full consideration of the constitutional and statutory context. The exhaustive examination in *Indira Gandhi*, of the specific constitutional context and subject matter of art. 12(4) of the FC, explained why this provision required 'parent' to be read as being plural. The Syariah Courts have full power to decide matters within their jurisdiction. Where, however, they act outside their jurisdiction, the civil courts retain the supervisory power to correct this error; in other words, a decision made by the Syariah Courts outside their jurisdiction could be set aside by the civil courts. (para 14)

(3) The Federal Court judgment in *Indira Gandhi*, as was the case for all Federal Court judgments, was binding throughout the nation. *Indira Gandhi* was clearly applicable to the instant case; it applied such that the conversions were *ab initio* null and void. (paras 19 & 22)

(4) *Dahlia Dhaima* was inapplicable. The effect of the illegality caused by failing to obtain one of the parent's consent could not be cured by other extraneous factors because it was a legal requirement pursuant to the provisions of the FC that both parents' consent must be obtained. Other factors could not detract from the constitutional requirements. (para 21)

Abu Bakar Jais FCJ (concurring):

(1) *Dahlia Dhaima* was also a case of conversion. In *Dahlia Dhaima*, the appellant was not a minor when she decided to go to the Syariah Court and, more importantly, the appellant was a Muslim when she sought to be declared no longer a Muslim by the Syariah Courts. *Dahlia Dhaima* must be taken or understood according to the peculiar facts of that case. (paras 28, 32 & 34)

Bahasa Melayu *Headnotes*

Responden telah berkahwin dengan seorang bernama Nagahswaran pada 2008 dan, ketika itu, pihak-pihak menganut agama Hindu. Perkahwinan tersebut dikurniakan tiga orang anak dan anak-anak ini turut menganut agama Hindu. Responden terpaksa meninggalkan rumah kelamin akibat deraan fizikal oleh Nagahswaran dan, berikutan itu, dia terpisah dengan anak-anaknya. Responden memfailkan penceraian di Mahkamah Tinggi dan kemudian memperoleh perintah *ad interim* untuk peliharaan, jagaan dan kawalan tunggal anak-anak tersebut. Nagahswaran, walau bagaimanapun, enggan mematuhi perintah tersebut dan tidak memulangkan anak-anak mereka pada responden. Nagahswaran, yang sudah memeluk Islam, telah menukar agama anak-anak tersebut ke Islam. Pada masa yang sama, perceraian antara responden dan Nagahswaran dimuktamadkan. Responden memohon penjelasan daripada Pendaftar Mualaf Negeri Perlis tentang status penukaran agama anak-anaknya kerana ini dilakukan tanpa kebenaran responden sebagai ibu mereka yang sah. Majlis Agama Islam dan Adat Istiadat Melayu Perlis menyatakan bahawa penukaran agama anak-anak tersebut telah dilakukan dengan kebenaran Nagahswaran iaitu bapa mereka. Responden memohon semakan kehakiman di Mahkamah Tinggi tetapi permohonannya ditolak. Keputusan Mahkamah Tinggi diakas oleh Mahkamah Rayuan. Maka timbul rayuan ini oleh perayu-perayu untuk kebenaran merayu terhadap keputusan Mahkamah Rayuan. Isu-isu yang terbit untuk diputuskan adalah sama ada: (i) Perlembagaan Persekutuan ('PP') versi Bahasa Melayu telah ditetapkan secara rasmi bawah per. 160(a) PP apabila Yang di-Pertuan Agong ('YDPA') berkenan mencemar duli ketika perasmian terjemahan itu; (ii) terma 'parent' dan 'parents' digunakan

demi membawa maksud khusus dalam PP, satu hujahan yang tidak ditangani dalam keputusan Mahkamah Persekutuan dalam *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* ('*Indira Gandhi*'); (iii) keputusan *Indira Gandhi* terhad di Wilayah Persekutuan Putrajaya, Kuala Lumpur dan Labuan sahaja dan tidak terpakai di Perlis; dan (iv) kes ini serupa, berdasarkan fakta dan prinsip, dengan kes *Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor And Another Appeal* ('*Dahlia Dhaima*') dan harus terpakai iaitu kanak-kanak yang menjadi pertikaian telah ditukarkan agama mereka secara sah.

Diputuskan (menolak permohonan)

Oleh Nallini Pathmanathan HMP menyampaikan penghakiman mahkamah:

(1) Teks PP yang berwibawa adalah versi Bahasa Inggeris. Seperti yang dijelaskan dalam *Indira Gandhi*, YDPA tidak menitahkan terjemahan Bahasa Melayu sebagai berwibawa, seperti yang dikehendaki bawah per. 160B PP.

(2) *Indira Gandhi* memutuskan bahawa kebenaran kedua-dua ibu bapa diperlukan secara berperlembagaan agar memberi kesan undang-undang pada sijil-sijil penukaran agama. Dalam kata lain, perkataan 'parent', dalam per. 12(4) PP, harus dibaca agar bermaksud kedua-dua ibu bapa. Ini adalah kesimpulan yang dicapai selepas pertimbangan penuh konteks berperlembagaan dan statutori. Pemeriksaan menyeluruh dalam *Indira Gandhi*, akan konteks berperlembagaan khusus dan hal perkara per. 12(4) PP, menjelaskan mengapa peruntukan ini mengkehendaki agar 'parent' dibaca secara jamak. Mahkamah Syariah mempunyai kuasa penuh untuk memutuskan hal-hal perkara dalam bidang kuasanya. Walau bagaimanapun, apabila Mahkamah Syariah bertindak luar bidang kuasanya, mahkamah sivil mempunyai kuasa penyeliaan untuk membetulkan kekhilafan ini; dalam kata lain, keputusan yang dibuat oleh Mahkamah Syariah luar daripada bidang kuasanya boleh diketepikan oleh mahkamah sivil.

(3) Penghakiman Mahkamah Persekutuan dalam *Indira Gandhi*, sebagaimana kesemua penghakiman Mahkamah Persekutuan, adalah mengikat di seluruh negara. *Indira Gandhi* nyata terpakai dalam kes ini; kes *Indira Ghandi* terpakai bahawa penukaran agama tersebut tidak sah dan terbatal *ab initio*.

(4) *Dahlia Dhaima* tidak terpakai. Kesan ketaksahan yang disebabkan oleh kegagalan memperoleh kebenaran salah seorang ibu bapa tidak boleh dipulihkan oleh faktor-faktor yang tidak berkaitan kerana sudah menjadi keperluan undang-undang bawah peruntukan PP bahawa kebenaran kedua-dua ibu bapa mesti diperolehi. Lain-lain faktor tidak boleh melemahkan keperluan-keperluan berperlembagaan.

Abu Bakar Jais HMP (menyetujui):

(1) *Dahlia Dhaima* juga adalah kes penukaran agama. Dalam *Dahlia Dhaima*, perayu bukan kanak-kanak semasa dia hadir ke Mahkamah Syariah dan, lebih penting lagi, perayu seorang Muslim semasa dia memohon pengisytiharan daripada Mahkamah Syariah bahawa dia bukan lagi seorang Muslim. *Dahlia Dhaima* harus ditafsir atau difahami menurut fakta tersendiri kes tersebut.

Case(s) referred to:

Alma Nudo Atenza v. PP & Another Appeal [2019] 5 CLJ 780 FC ***(refd)***

Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak & Ors [2016] 6 CLJ 562 HC ***(refd)***

Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Another Appeal [2024] 5 CLJ 855 FC ***(refd)***

Dhinesh Tanaphll v. Lembaga Pencegahan Jenayah & Ors [2022] 5 CLJ 1 FC ***(refd)***

Eu Finance Bhd v. Lim Yoke Foo [1982] CLJU 21; [1982] 1 LNS 21 FC ***(refd)***

Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 465 FC ***(refd)***

Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals [2018] 3 CLJ 145 FC ***(refd)***

Ketheeswaran Kanagaratnam & Anor v. PP [2024] 2 CLJ 341 FC ***(refd)***

Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain [2007] 3 CLJ 557 FC ***(refd)***

Pendaftar Muallaf Wilayah Persekutuan v. LCY & Ors And Another Appeal [2021] CLJU 2079; [2021] 1 LNS 2079 CA ***(refd)***

Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 301 FC ***(refd)***

SIS Forum (Malaysia) v. Kerajaan Negeri Selangor; Majlis Agama Islam Selangor (Intervener) [2022] 3 CLJ 339 FC ***(refd)***

Viran Nagapan v. Deepa Subramaniam & Other Appeals [2016] 3 CLJ 505 FC ***(refd)***

Legislation referred to:

Administration of the Religion of Islam (Perak) Enactment 2004, s. 101(2)

Administration of the Religion of Islam Enactment 2006, s. 117(b)

Courts of Judicature Act 1964, s. 96

Federal Constitution, arts. 12(4), 160(1), 160B, Ninth Schedule, List II, Item 1

Perlis Administration of the Religion of Islam Enactment 2006, s. 112(2)

For the 1st, 3rd & 4th appellants - Mohd Radhi Abas & Ainul Wardah Shahidan; SLAs, Perlis

For the 2nd appellant - Haniff Khatri, Zainul Rijal Abu Bakar, Aidil Khalid, Hariz Yusoff, Danial Farhan Zainul Rijal & Ali Huzaifah Shariff Ahmed; M/s Chambers Of Zainul Rijal

For the respondent - Srimurugan Alagan, Shamsher Singh Thind, Gunamalar Joorindanjn & Thian Yee Chin; M/s Srimurugan & Co

[Editor's note: For the Court of Appeal judgment, please see Loh Siew Hong v. Pendaftar Mualaf Perlis & Ors [2024] 4 CLJ 903 (affirmed); For the High Court judgment, please see [2023] 8 CLJ 158 (overruled).]

Reported by Najib Tamby

JUDGMENT

Nallini Pathmanathan FCJ:

[1] This is an application for leave to appeal under s. 96 of the Courts of Judicature Act 1964 ('CJA') in respect of a decision handed down by the Court of Appeal on 22 January 2024.

Facts

[2] The applicant was married to Nagahswaran a/l Muniandy ("Nagahswaran") on 25 May 2008. At the time of their marriage, both the applicant and Nagahswaran professed the Hindu religion; in the applicant's words, she followed the "Hindu-Buddha" religion. Their marriage was solemnised under the Law Reform (Marriage and Divorce) Act 1976.

[3] The marriage resulted in the birth of twin daughters, Sulochana a/p Nagahswaran and Sulochini a/p Nagahswaran, on 7 November 2008, and a son, Thatchina Moorthi a/l Nagahswaran, born on 26 May 2011. The applicant affirmed that, at all material times, the three children professed the Hindu religion and had not converted to Islam.

[4] Between 3 March 2019 and 21 February 2022, the applicant was separated from her children due to Nagahswaran's actions, including physical abuse and forcing her to leave the matrimonial home.

[5] On 13 December 2019, the applicant filed a divorce petition at the Kuala Lumpur High Court (Divorce Petition No. WA-33-734-12-2019).

[6] Subsequently, on 7 January 2020, the applicant obtained an *ad interim* order from the Kuala Lumpur High Court granting her sole guardianship, care, and control of the three children. Despite being fully aware of this court order, Nagahswaran refused to comply and did not return the children to the applicant. Her attempts to regain custody of her children were unsuccessful.

[7] Following this, on 7 July 2020, Nagahswaran converted to Islam and attempted to also convert his three children. Subsequently, the applicant and Nagahswaran were divorced pursuant to a Kuala Lumpur High Court order dated 23 September 2021.

[8] The applicant, through her solicitors, sought clarification from the first respondent, the Registrar of Mualafs, Perlis, on the status of the alleged conversion to Islam of the three children since it was made without the applicant's consent as their lawful mother.

[9] In response to the applicant's inquiries, the second respondent, Majlis Agama Islam dan Adat Istiadat Melayu Perlis, stated that the conversion of the three children had been made with the consent of their father, Nagahswaran. The second respondent referenced s. 117(b) of the Perlis Administration of the Religion of Islam Enactment in support of this assertion which they asserted authorised unilateral conversion.

[10] This forms the basis of the present judicial review and thereby the appeal. The High Court dismissed the judicial review on 11 May 2023. The Court of Appeal then set aside the High Court's order and allowed the judicial review on 22 January 2024.

[11] In essence, the grounds of appeal raised by the appellants can be summarised as follows: first, the Bahasa Malaysia version of the Federal Constitution was officially prescribed under art. 160(1)(a) when the Yang di-Pertuan Agong attended the launch of its translation. Second, the terms 'parent' and 'parents' are used to connote specific meaning in the Federal Constitution, a point they assert was not addressed in the Federal Court decision in *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 3 CLJ 145; [2018] MLJU 69 ('*Indira Gandhi*'). Third, the decision in *Indira Gandhi* is limited to Wilayah Persekutuan Putrajaya, Kuala Lumpur, and Labuan, and does not apply to Perlis. Fourth, the present case is akin, in fact and principle to the case of *Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Another Appeal* [2024] 5 CLJ 855, and should apply such that the minors in question have been validly converted.

Authoritative Text Of The Constitution

[12] The authoritative text of the Constitution is the English version. As explained in *Indira Gandhi*, the Yang di-Pertuan Agong has not prescribed the Bahasa Malaysia translation as authoritative, as required by art. 160B of the Federal Constitution.

> Indira Gandhi, [153]:
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> [153] The High Court held that since the requisite prescription of the national language version under art. 160B above has not been effected, the authoritative or official text is the English version. The learned JC observed that the Senior Federal Counsel had not submitted otherwise. In the present appeals, despite the learned state legal adviser's reliance on art. 160B, no evidence of the necessary prescription was adduced by either of the respondents. In the circumstances, we will proceed on the basis that the English version to be authoritative.

[13] As such, the appellant's contention cannot stand.

Summary Of *Indira Gandhi*

[14] As alluded to earlier, the crux of the appellant's submissions revolve around the correctness of *Indira Gandhi*. It is therefore apposite for us to recapitulate the key points that were made in that case:

(i) matters of constitutional and statutory interpretation, as well as review of the actions of public authorities, lie squarely within the jurisdiction of the civil courts;

Indira Gandhi, [101]: A

> [101] It is not disputed that the Registrar of Muallafs was exercising a statutory function as a public authority under the Perak Enactment in issuing the said Certificates. As had been clearly manifested earlier, the jurisdiction to review the actions of public authorities, and the interpretation of the relevant state or federal legislation as well as the Constitution, lie squarely within the jurisdiction of the civil courts. This jurisdiction, which constitutes the judicial power essential in the basic structure of the Constitution, is not and cannot be excluded from the civil courts and conferred upon the Syariah Courts by virtue of Article 121 (1A) B C

Indira Gandhi, [107] - [108]:

> [107] It is not disputed that the Registrar of Muallafs was exercising a statutory function as a public authority under the Perak Enactment in issuing the said certificates. As had been clearly manifested earlier, the jurisdiction to review the actions of public authorities, and the interpretation of the relevant state or federal legislation as well as the Constitution, lie squarely within the jurisdiction of the civil courts. This jurisdiction, which constitutes the judicial power essential in the basic structure of the Constitution, is not and cannot be excluded from the civil courts and conferred upon the Syariah Courts by virtue of art. 121(1A). D E
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> [108] We need to emphasise this. *That the determination of the present appeals does not involve the interpretation of any Islamic personal law or principles*. This has to be made clear. The yardstick to determine the validity of the conversion is the administrative compliance with the express conditions stated in ss 96 and 106 of the Perak Enactment, namely the utterance of the affirmation of faith (the Kalimah Syahadah) and the consent of the parent. *The subject matter in the appellant's application is not concerned with the status of her children as Muslims converts or with the questions of Islamic personal law and practice, but rather with the more prosaic questions of the legality and constitutionality of administrative action taken by the registrar in the exercise of his statutory powers*. This is the pith of the question at hand. F G
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> (emphasis added)

(ii) where there is a statutory provision stating that a certificate of conversion to Islam constitutes conclusive proof of the facts stated therein (see for instance s. 112(2) of the Perlis Administration of the Religion of Islam Enactment 2006 in the present case and s. 101(2) of the Administration of the Religion of Islam (Perak) Enactment 2004 in *Indira Gandhi*), this only relates to the facts stated in the certificate *eg*, that the relevant names have been registered with the Registrar of Mualafs. It does not mean that the certificates and the conversion it records are legal. H I

Indira Gandhi, [126] - [127] and [133]:

> [126] In our view therefore, *based on the principles in Anisminic (supra), the lack of jurisdiction by the Registrar renders the Certificates issued a nullity*. Section 101(2) *cannot have the effect of excluding the court's power of judicial review over the Registrar's issuance of the Certificate. It is settled law that the supervisory jurisdiction of courts to determine the legality of administrative action cannot be excluded even by an express ouster clause*. It would be repugnant to the rule of law and the judicial power of the courts if the Registrar's decision is immune from review, even in light of uncontroverted facts that the Registrar had no jurisdiction to make such a decision.
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> [127] In any case, the language of section 101(2) itself does not purport to oust judicial review. The section merely states that a Certificate of Conversion to the religion of Islam shall be conclusive proof of the facts stated therein. The facts stated in the Certificate are that the persons named have been converted to the religion of Islam, and that their names have been registered in the Registrar of Muallafs. In the instant appeals, the *fact* of the conversion or the registration of the appellant's children are not challenged. What is challenged is the *legality* of the conversion and registration.
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> ...
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> [133] ... In these circumstances, the contention that since the certificate conclusively states that the Registrar had registered the conversion of the children, the process of conversion must have been done to the satisfaction of the Registrar in accordance with the Enactment, is untenable at best.

Abang Iskandar FCJ in *Dahlia Dhaima bt Abdullah v. Majlis Agama Islam Selangor And Another Appeal* [2024] 5 CLJ ('*Dahlia Dhaima*') affirms this, [61] - [62]:

> [61] As regards the conclusiveness of the certificate of conversion in respect of the facts stated therein contained in section 74(3) of the 1989 Enactment, I find support of the decision of the Federal Court in *Indira Gandhi a/p Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 1 MLJ 545 which has held on the same point of conclusiveness of the certificate of conversion in section 101(2) of the Administration of the Religion of Islam (Perak) Enactment 2004. It held that:
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> > [133] In any case, the language of s. 101(2) itself does not purport to oust judicial review. The section merely states that a certificate of conversion to the religion of Islam shall be conclusive proof of the facts stated therein. The facts stated in the certificate are that the persons named have been converted to the religion of Islam, and that their

> names have been registered in the Registrar of Muallafs. In the instant appeals, the fact of the conversion or the registration of the appellant's children are not challenged. What is challenged is the legality of the conversion and registration.
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> [62] Thus, in respect of QOL 3, although section 74(3) renders the certificate of conversion conclusive proof as to the facts stated therein, *one is not precluded from challenging the correctness and the validity of the process leading to the statement of the facts in the certificate of conversion and/or its issuance. Thus, if it can be shown that the facts stated in the certificate of conversion was incorrectly stated; or if the certificate was issued not according to law, that conclusiveness is bound to be reviewed*.
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> (emphasis added)

(iii) with this premise established, *Indira Gandhi* therefore ruled that the consent of both parents was constitutionally required in order for certificates of conversion to have the force of law. In other words, the word 'parent' in art. 12(4) of the Federal Constitution should be read as meaning both parents;

> *Indira Gandhi*, [181]:
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> "[181]: Based on a purposive interpretation of art 12(4) read with the Eleventh Schedule of the Federal Constitution, and on an application of ss 5 and 11 of the GIA, it is concluded that the consent of both the appellant and her husband are required before a certificate of conversion to Islam can be issued in respect of the children.

(iv) it is clear that this was a conclusion arrived at after full consideration of the constitutional and statutory context; in other words, the appellant's argument that 'parent' and 'parents' are sometimes used to specifically denote the singular and plural in other constitutional provisions does not withstand scrutiny. The exhaustive examination in *Indira Gandhi* of the specific constitutional context and subject matter of art. 12(4) explains why this provision requires 'parent' to be read as being plural (*Indira Gandhi*, [142] - [181]). Indeed, the specific argument that *Indira Gandhi* was *per incuriam* was rightly rejected by the Court of Appeal in *Pendaftar Muallaf Wilayah Persekutuan v. LCY & Ors And Another Appeal* [2021] CLJU 2079; [2021] 1 LNS 2079; [2022] 1 MLJ 653 by Nordin Hassan JCA (later FCJ);

(v) the Syariah Courts have full power to decide all matters within their jurisdiction. Where however, they act outside their jurisdiction, the civil courts retain the supervisory power to correct this error; in other words, a decision made by the Syariah Courts outside their jurisdiction can be set aside by the civil courts. Put more simply in the

context of conversion, where a Syariah Court incorrectly determines that what is in fact an *ab initio* case is a renunciation case, the civil courts have the power to step in and correct this;

Indira Gandhi, [86]:

> [86] The purport and effect of Article 121(1A) is eloquently explained by Harding (*supra*) as follows:
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> > The amendment does not purport to oust the jurisdiction of the High Court to review decisions of the Syariah Courts. It merely says, in effect, that the ordinary courts cannot exercise the Syariah Court's jurisdiction, a position which it should be noted, applies to any inferior jurisdiction; it is indeed a cardinal principle of judicial review that the court cannot substitute its decision for that of the inferior jurisdiction whose decision is reviewed. It does not therefore seem possible that the Syariah Courts, by this small amendment, have been converted into a totally separate legal system ... As things stand the civil courts exercise the power of judicial review and this is of course part of the judicial power. Nothing in clause 1A attempts to interfere with this proposition ... For these reasons it seems that clause 1A was enacted for the avoidance of doubt. It seeks to ensure that decisions made within jurisdiction by the Syariah Courts are not reversed by the civil courts. *The qualification 'made within jurisdiction' is important; the ordinary courts can still decide whether a given decision is within jurisdiction, just as they can with any inferior court. In this sense the primacy of the civil courts has not been disturbed.*
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> (emphasis added by Zainun Ali FCJ)

Iki Putra bin Mubarrak v. Kerajaan Negeri Selangor & Anor [2021] MLJU 211, [64] (as reiterated in *SIS Forum (Malaysia) v. Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener)* [2022] MLJU 171, [30]):

> [64] We agree with His Lordship generally on the approach to be taken by the Courts in determining jurisdiction. However, in light of the judgments of this Court in *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat And Another Case* [2017] 3 MLJ 561 and *Indira Gandhi a/p Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 1 MLJ 545, *in all cases, the civil Superior Courts retain supervisory jurisdiction which is inherent in their function under Articles 4(1) and 121(1) of the FC. Thus, unless their jurisdiction is very clearly excluded by virtue of subject-matter under Article 121(1A), the question that the civil Superior Courts have no jurisdiction to determine any form of dispute does not arise*.
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> (emphasis added)

(vi) this is made clear as early on as *Viran Nagapan v. Deepa Subramaniam & Other Appeals* [2016] 3 CLJ 505; [2016] 1 MLJ 585 ('*Viran*') where the court held that the Syariah Court's custody order was 'of no effect due to want of jurisdiction';

> *Viran*, [31]:
>
> We adopt the same view. Thus, on the facts of this case, the Syariah High Court has no jurisdiction to dissolve the civil marriage between the ex-husband and the ex-wife and to make an order granting custody of the two children out of the marriage to the ex-husband. The jurisdiction to do that is with the civil court. In consequence, the Syariah Court's order in dissolving the marriage between the ex-husband and the ex-wife and granting custody of the children to the ex-husband is of no effect due to want of jurisdiction.

See also *Eu Finance Bhd v. Lim Yoke Foo* [1982] CLJU 21; [1982] 1 LNS 21:

> Where a decision is null by reason of want of jurisdiction, it cannot be cured in any appellate proceedings; failure to take advantage of this somewhat futile remedy does not affect the nullity inherent in the challenged decision. The party affected by the decision may appeal 'but he is not bound to (do so), because he is at liberty to treat the act as void'.

(vii) consent or agreement cannot confer jurisdiction upon a court or tribunal; put another way, the fact that an individual consented to the jurisdiction of either the civil or the Syariah Court has no bearing whatsoever on whether the court they consented to is in fact the court that has jurisdiction over their case;

> *Indira Gandhi*, [68]:
>
> [68] It is not open for the Syariah Courts to enlarge their own jurisdiction by agreements: "it is a fundamental principle that no consent or acquiescence can confer on a court or tribunal with limited statutory jurisdiction any power to act beyond that jurisdiction" (*Federal Hotel Sdn Bhd v. National Union of Hotel, Bar & Restaurant Workers* [1983] 1 MLJ 175).

(viii) as an example, if an individual goes to the civil courts when their application for conversion is in actual fact a renunciation case, the civil courts nevertheless have no jurisdiction over the matter. Similarly, if an individual goes to the Syariah Courts when their application for conversion is more accurately described as an *ab initio* case, the Syariah Courts nevertheless have no jurisdiction over the matter.

Case Law Post - *Indira Gandhi*

[15] Since *Indira Gandhi* was decided, it has been re-affirmed and developed upon at length. This is demonstrated by the express and implied affirmation of *Indira Gandhi*, *inter alia*, in the following decisions by our apex court: (*Alma Nudo Atenza v. PP & Another Appeal* [2019] 5 CLJ 780; [2019] 4 MLJ 1; *Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 465; [2021] MLJU 211; *SIS Forum (Malaysia) v. Kerajaan Negeri Selangor; Majlis Agama Islam Selangor (Intervener)* [2022] 3 CLJ 339; [2022] MLJU 171; *Dhinesh Tanaphll v. Lembaga Pencegahan Jenayah & Ors* [2022] 5 CLJ 1; [2022] 3 MLJ 356; *Ketheeswaran Kanagaratnam & Anor v. PP* [2024] 2 CLJ 341; [2024] 1 MLJ 851).

[16] What is clear therefore is that both the logic and precedential weight of *Indira Gandhi* is unassailable; there can be no argument of any merit that it was decided *per incuriam*.

[17] Nevertheless, we find it necessary to outline some of the developments in the law surrounding constitutional religious identity for the sake of clarity of *Indira Gandhi*'s application to the present facts.

[18] In particular, the distinction made in *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301; [2021] MLJU 105 ('*Rosliza*') between *ab initio* and renunciation cases is relevant. This was also a case relied on by the learned High Court Judge in his consideration of the present case; it is therefore helpful to make clear exactly what *Rosliza* is authority for:

(i) the phrase '*professing the religion of Islam*' as described in Item 1, List II, Ninth Schedule of the FC ('State List') is a constitutional provision. Therefore, ascertaining its meaning is strictly a task for the civil courts.

> *Rosliza*, [103] - [104]:
>
> [103] All judicial power vests solely in the civil superior courts as per the basic structure of our FC ingrained in Article 121. However, Article 121(1A) dispossess the civil courts of jurisdiction ratione materiae once it is established that the subject-matter of the suit is one which falls within the jurisdiction of the Syariah Courts. Having said that, in *ab initio* cases, the issue before the court is not one of faith. It is a question of one's identity under the FC. In contrast, renunciation cases concern persons who despite being Muslims, no longer have faith or believe in the religion.
>
> [104] *The phrase 'professing the religion of Islam' is a provision of the FC. Ascertaining the meaning of any provision of the FC is a judicial power classified broadly under the umbrella of judicial review and accordingly, it is a power vested strictly and only in the civil superior courts.*
>
> (emphasis added)

(ii) before the civil courts determine whether it is they or the Syariah Courts that have jurisdiction, the civil courts must first conduct a 'proper appreciation of the evidence' (*Rosliza*, [124]) to determine if the Syariah court possesses jurisdiction '*rationae personae*' and '*rationae materiae*' (*Rosliza*, [78] to [80]);

(iii) part of the determination of whether the Syariah Court has jurisdiction '*rationae personae*' is determining whether the case is an *ab initio* case or one of renunciation;

(iv) an *ab initio* case is where what is alleged is that the applicant was never a Muslim. *Ab initio* cases constitute those where there is insufficient proof that the applicant 'affirmatively professed the religion of Islam at the material time' (*Rosliza*, [98]). Without going into too much detail, these include but are not limited to the fact patterns present in *Rosliza* and *Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak & Ors* [2016] 6 CLJ 562;

(v) renunciation cases occur where what is alleged is that the applicant is no longer a Muslim. In other words, where one has always been a Muslim, the Syariah Courts' approval is required before the applicant is permitted to leave her religion (*Rosliza*, [91]). An example of this is the case of *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain* [2007] 3 CLJ 557; [2007] 4 MLJ 585.

Is *Indira Gandhi* Applicable to the Present Facts?

[19] The appellant argues that *Indira Gandhi* should be confined to Wilayah Persekutuan; we see no basis for this as the Federal Court judgment in *Indira Gandhi* is, as is the case for all Federal Court judgments, binding throughout the nation.

[20] We note also that the appellants raised a leave question essentially contending that the case of *Dahlia Dhaima* should be applied to the present facts.

[21] However, it is inapplicable. The effect of the illegality caused by failing to obtain one of the parent's consent cannot be cured by other extraneous factors, because it is a legal requirement pursuant to the provisions of the Federal Constitution that both parents' consent must be obtained. Other factors cannot detract from the constitutional requirement. This issue is examined in the ensuing paragraphs.

[22] Conversely, *Indira Gandhi* is clearly applicable to the instant case. As succinctly explained by the Court of Appeal, three minors were converted with the consent of only one parent; therefore, *Indira Gandhi* applies such that the conversions are *ab initio* null and void.

[23] In reading art. 12(4) with art. 160(1) of the Federal Constitution as well as in construing art. 12(4) purposively, *Indira Gandhi* held that the consent of both parents is constitutionally required in order for the conversion of a minor to be legally valid (see also *Rosliza*, [68] to [69] and [96]). In other words, where a minor has been unilaterally converted, the conversion is 'void and must be set aside' (*Indira Gandhi*, [185]).

Indira Gandhi, [149] - [150]:

[149] *The pertinent provision in the Eleventh Schedule, read together with art 160(1)*, provides that in interpreting the Constitution:

> Construction of singular or plural - words in the singular include the plural, and words in the plural include the singular.

[150] *Applying the guide to interpretation to art 12(4), the position is fairly clear: the singular word 'parent' includes the plural 'parents'*. The religion of the minor child is to be decided by his 'parent' or 'parents' as the case may be

Indira Gandhi, [163] - [164]

[163] ... Conversion to another religion is a momentous decision affecting the life of a child, imposing on him a new and different set of personal laws. Where a decision of such significance as the conversion of a child is made, *it is undoubtedly in the best interests of the child that the consent of both parents must be sought. The contrary approach of allowing the child to be converted on the consent of only one parent would give rise to practical conundrums*. The learned JC has described one such milieu (at para. [35]):

> If by 'parent' is meant either parent then we would have a situation where one day the converted parent converts the child to his religion and the next day the other parent realising this would convert the child back to her religion. The same can then be repeated *ad nauseam*.

[164] Such a scenario would undoubtedly be detrimental to the welfare of the child. Since a literal construction of art. 12(4) would give rise to consequences which the legislative could not possibly have intended, the Article should not be construed literally (Sukma Darmawan at p. 247). *A purposive reading of art. 12(4) that promotes the welfare of the child and is consistent with good sense would require the consent of both parents (if both are living) for the conversion of a minor child*.

Indira Gandhi, [185]:

[185] We also find that the certificates of conversion were issued without the consent of the appellant thus contravening art. 12(4) of the Federal Constitution and ss. 5 and 11 of the GIA. *The certificates of conversion are void and must be set aside*.

(emphasis added)

[24] Applying this reasoning, the Court of Appeal correctly concluded that the unilateral conversion of the appellant was void (Court of Appeal, [55]).

[25] The argument of the appellants otherwise, in effect, would reverse the Federal Court's holding in *Indira Gandhi* by encouraging the unconstitutional practice of unilateral conversion to persist. Indeed, we remind ourselves of Zainun Ali FCJ's prescient reminder in *Indira Gandhi* that unilateral conversion, in all its forms, will be unjustifiably detrimental to the welfare of the child (*Indira Gandhi*, [163] to [164]).

[26] Therefore, there is no *prima facie* case of success in the appeal and the application for leave to appeal is dismissed.

Abu Bakar Jais FCJ (supporting):

[27] I have read the written judgment drafted by my learned sister, Nallini Pathmanathan, FCJ regarding the decision we made in respect of this case. We unanimously refused leave to appeal to this court on 14 May 2024.

[28] In respect of the present case, I wish to point out that I was also a member of the panel in this court with regard to the case of *Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Another Appeal* [2024] 5 CLJ 855. This is also a case of conversion.

[29] I only would wish to reiterate what I have alluded to in *Dahlia* as follows.

[30] First, only the Syariah Courts have jurisdiction over apostasy cases in view of this court's earlier decision in *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301.

[31] In *Dahlia*, I also found as follows:

> [80] Utmost is the fact that the appellant agreed without restrain the Syariah High Court had the requisite jurisdiction to make the finding and come to a decision in respect of her challenge with regard to her status. She had willingly entrusted the Syariah Courts to determine the truth of her case. By filing her case at the Syariah High Court, she had conscientiously and with full capacity, considering her age at that time, accepted the jurisdiction of the same and submitted herself to that court.

[32] In *Dahlia* too, it is crucial to note that the appellant was not a minor when she decided to go to the Syariah Courts and more importantly the appellant was a Muslim when she sought to be declared no longer a Muslim from the Syariah Courts. This is how it is stated in *Dahlia*:

[33] First, when the appellant went to the Syariah High Court, she admitted she was a Muslim. That is proven by the declaration she requested – to be declared no longer a Muslim. Therefore, at the outset there is no issue she was a non-Muslim solely regarded as a Muslim.

[34] *Dahlia* must be taken or understood according to the peculiar facts of that case.

[35] Having noted all of the above, I wish to say I agree that in our present case, the application for leave to appeal ought to be dismissed.